STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY Approval of its Energy Efficiency Portfolio and Plan Pursuant to Section 12-103(f) of the Public Utilities Act	)))))	 Docket No. 07-0541

PRE-TRIAL MEMORANDUM OF THE ILLINOIS
DEPARTMENT OF COMMERCE AND ECONONIC OPPORTUNITY

This matter coming before the Illinois Commerce Commission ("Commission") for TRIAL on January 4, 2008, the Illinois Department of Commerce and Economic Opportunity ("Department" or "Petitioner") hereby submits it's Pre-Trial Memorandum.

I. Parties

A. Petitioner:

Illinois Department of Commerce and Economic Opportunity

Gary M. Griffin
Allan V. Abinoja
Assistant Attorneys General
General Law Bureau
100 W. Randolph St., 13th Fl.
Chicago, IL 60601
(312) 814-3650/5312

David D. Streicker, General Counsel
John C. Knittle, Dep. General Counsel
620 East Adams Street
Springfield, Illinois 67201
(217) 524-5696

B. Witnesses Who Have Submitted Prior Testimony:

William F. Abolt, City of Chicago

Jonathan Feipel, Illinois Department of Commerce and Economic Opportunity

Henry Henderson, National Resources Defense Council

Philip H. Mosenthal, Office of the Illinois Attorney General

Richard J. Zuraski, Illinois Commerce Commission Staff

II. Nature of the Case

In this case, the Department seeks approval of its Energy Efficiency Portfolio and Plan ("Portfolio"), which the Department submitted to the Commission on November 15, 2007, pursuant to 220 ILCS 5/12-103(e) of the Public Utilities Act ("PUA"). As required under Section 12-103(e) of the PUA, the Department filed its Portfolio with the Commission "in connection with the utility's filing regarding the energy efficiency and demand response measures that the utility implements." See Docket No. 07-0539 (Approval of Energy Efficiency Portfolio and Plan by Ameren[1]) and Docket No. 07-0540 (Approval of Energy Efficiency Portfolio and Plan by Commonwealth Edison Company ("ComEd"). The Portfolio identifies cost-effective energy efficiency measures which, together with those measures administered by the electric utilities, are designed to meet the incremental annual energy savings goals set forth in Section 12-103(b) of the PUA.

III. Statutory Requirements of the Portfolio

Section 12-103 of the PUA requires that the Portfolio meet certain requirements. These include:

A. Cost Effective. The overall Portfolio of energy efficiency programs must be "cost effective" as defined by the Act. Section 12-103(a) states that "As used in this Section, "cost-effective" means that the measures satisfy the total resource cost test. The low-income measures described in subsection (f)(4) of this Section shall not be required to meet the total resource cost test." Thus the combined

[1] "Ameren" collectively refers to Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP.

portfolio of utility and DCEO programs (minus the low-income programs) has to meet the Total Resource Cost Test.

B. Reduction Targets. The overall Portfolio of energy efficiency programs must be designed to meet specific electricity usage reduction targets as denoted by the statute. These goals are to be met by ComEd and Ameren in their respective territories in conjunction with DCEO. Section 12-103(e) states that "The portfolio of measures, administered by both the utilities and the Department, shall, in combination, be designed to achieve the annual savings targets described in subsections (b) and (c) of this Section, as modified by subsection (d) of this Section." (220 ILCS 5/12-103(e)) The utilities and DCEO are to coordinate their efforts and develop efficiency programs and three year plans in order to meet incremental, annual energy savings goals. Section 12-103(b) includes the incremental, annual goals that the combined portfolio must meet. The reduction targets for the first three years are: (1) 0.2% of energy delivered in the year commencing June 1, 2008; (2) 0.4% of energy delivered in the year commencing June 1, 2009; (3) 0.6% of energy delivered in the year commencing June 1, 2010." The annual reductions escalate to 2% of energy delivered in 2015 and continue at 2% each year thereafter. (220 ILCS 5/12-103(b))

C. Demand Response. Section 12-103(c) requires that "the Electric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act." (220 ILCS 5/12-103(c))

D. <u>Cost Cap.</u> The Portfolio is to meet the above referenced electricity reduction targets within an escalating cost cap. Section 12-103(d) includes a formula for calculating the maximum average impact on customers, which for the first three years is limited to "(1) in 2008, no more than 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; (2) in 2009, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2008 or 1% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; (3) in 2010, the greater of an additional 0.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2009 or 1.5% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007." (220 ILCS 5/12-103(d))

E. <u>Portfolio Split.</u> Section 12-103 contains guidance as to how the utilities and DCEO will divide the energy efficiency portfolio:

a. Demand Response. "Electric utilities shall implement 100% of the demand-response measures in the plans" (220 ILCS 5/12-103(e))

b. Utility Share. "Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission." (220 ILCS 5/12-103(e))

c. DCEO Share. "The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce and Economic Opportunity" (220 ILCS 5/12-103(e))

d. Public Sector Allocation. "A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures." (220 ILCS 5/12-103(e))

F. Portfolio Characteristics. Section 12-103(f) includes specific requirements for the Portfolio and plans as follows:

a. Reduction Goals within the Cost Cap. "Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e)." (220 ILCS 5/12-103(f)(1))

b. Codes. "Present specific proposals to implement new building and appliance standards that have been placed into effect." (220 ILCS 5/12-103(f)(2))

c. Revenue Estimates. "Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e)." (220 ILCS 5/12-103(f)(3))

d. Low-Income Coordination. "Coordinate with the Department and the Department of Healthcare and Family Services to present a portfolio of energy efficiency measures targeted to households at or below 150% of the poverty level at a level proportionate to those households' share of total annual utility revenues in Illinois." (220 ILCS 5/12-103(f)(4))

e. Cost Effective and Diverse. "Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs." (220 ILCS 5/12-103(f)(5))

f. Tariff. "Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs." (220 ILCS 5/12-103(f)(6))

g. Independent Evaluation. "Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year." (220 ILCS 5/12-103(f)(7))

G. <u>Next Generation Technologies.</u> Section 12-103(g) states that "No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices." (220 ILCS 5/12-103(g))

H. Penalties. Section 12-103(j) includes the penalty provision related to DCEO. It states that "If, after 3 years, or any subsequent 3-year period, the Department fails to implement the Department's share of energy efficiency measures required by the standards in subsection (b), then the Illinois Power Agency may assume responsibility for and control of the Department's share of the required energy efficiency measures." (220 ILCS 5/12-103(j))

IV. Satisfaction of the Statutory Requirements

The Portfolio satisfies the above-mentioned statutory requirements as follows:

A. Cost Effective. ICF International, Inc. performed the total resources cost test on the combined portfolio of the utility plus DCEO portfolio of programs and the portfolio passes the test. The DCEO low-income programs do not have to be included in this test as later described. Notwithstanding, DCEO endeavored to make its programs pass the Total Resources Cost Test as an indication of their cost effectiveness; this in no way should imply that DCEO believes that individual measures or program have to pass the TRC.

B. Reduction Targets. After substantial coordination with the utilities, DCEO, ComEd and Ameren agreed that DCEO's efficiency programs will cover 3 major areas: the public sector, the low-income sector and "market transformation" (training, education, etc.) programs. To that end, EEPS funding was divided based on the 75/25% split of program costs and the utilities and

DCEO further agreed that the DCEO share of the annual kWh savings targets would be less than 25% with the relevant utility making up the difference. DCEO's programs will account for around 20% (ranging from 18.6%- 21.5%) of the total kWh savings during the first three planning years. This kWh savings split is necessary in order to allow DCEO to fund less cost effective, but very necessary programs. DCEO's contribution plus the utility kWh savings projections meet or exceed the statutory requirements as presented in the parties' relevant testimonies. Further, DCEO's portion of the portfolio is designed to support the ongoing nature of the escalating reduction targets (2% reductions by 2015 and continuing thereafter) by incorporating incentive programs with longer term impacts and market transformation programs designed to develop a robust energy efficiency services industry necessary to enable the future statutory requirements.

C. Demand Response. Pursuant to "Electric utilities shall implement 100% of the demand-response measures in the plans" (220 ILCS 5/12-103(e)), DCEO does not plan to include demand-response specific measures in its portion of the portfolio. DCEO understands that the utilities have included Demand Response measures in their portions of the portfolio, thereby meeting this requirement.

D. Cost Cap. DCEO understands that the utilities have properly calculated the cost caps and that the DCEO plus utility portfolio does not exceed the cost cap.

E. Portfolio Split. The DCEO plus utility portfolio meets the Section 12-103(e) requirements with respect to the split of the portfolio:

a. Demand Response. As noted above, DCEO does not plan to include demand-response specific measures in its portion of the portfolio pursuant to Section 12-103(e).

b. Utility and DCEO shares. DCEO will administer 25% of the energy efficiency funding and ComEd and Ameren will administer the other 75% in order to cover the respective costs of each efficiency administrator pursuant to Section 220 ILCS 5/12-103(e).

c. Public Sector Allocation. DCEO's portion of the portfolio includes approximately 65% of its program funding and measures for the "public sector" which includes units of local government, municipal corporations, school districts, and community college districts. The statute requires that 10% of the total portfolio (40% of DCEO's portion) be procured from these specific groups. DCEO has included approximately 25% more funding than required in this area in order to also offer these programs to universities and state facilities, while still meeting the Section 12-103(e) requirement. This was done because universities and other state facilities make their purchasing decisions in a similar fashion to municipals, schools and community colleges and to avoid potential confusion if these groups were barred from DCEO's incentive programs targeted at municipals, schools and public community colleges.

I. <u>Portfolio Characteristics.</u> DCEO's portion of the portfolio meets the Section 12-103(f) requirements:

a. Reduction Goals within the Cost Cap. The DCEO plus utility portfolio is planned and projected to meet the electricity reduction requirements of the statute within the cost cap. This is demonstrated in the petitioners' testimony in compliance with Section 12-103(f)(1).

b. Codes. DCEO's Training Program will train industry personnel related to any new energy efficiency codes, for both buildings and appliances, as needed and as funds are available. The Capital Development Board regularly updates the Illinois Energy Conservation Code for Commercial Buildings. As a result, there is a need to provide training for commercial building professionals and the local officials that enforce the codes in order to educate them on the latest energy code updates. Because the statute refers to the support of "appliance standards that have been placed into effect" and because no such standards have yet been placed into effect in Illinois, DCEO did not explicitly include appliance training programs in its initial plan. However, if new appliance standards were adopted in Illinois (at the state or local level) that required training, DCEO would include training related activities as part of its Training Program. Moreover, in all cases where DCEO's efficiency programs include appliances, DCEO supports only the inclusion of high performance (Energy Star, etc.) models. DCEO's portion of the portfolio meets this requirement of Section 12-103(f)(2).

c. Revenue Estimates. DCEO understands that the utilities provided "estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures" in compliance with Section 12-103(f)(3).

d. Low-Income Coordination. DCEO, ComEd and Ameren worked together closely on the development of the total portfolio and on the development of a suite of low-income programs Pursuant to Section 12-130(f)(4). Once the decision was made that DCEO would manage the low-income programs, DCEO consulted with DHFS along with other low-income serving organizations such as the Illinois Housing Development Authority, the Center for Neighborhood Technology, etc. as well as the utilities.

e. Cost Effective and Diverse. As noted earlier, ICF International demonstrated that the DCEO plus utility portfolio passes the Total Resource Cost Test. Furthermore, the programs that make up the portfolio encompass all rate classes (industrial, commercial, residential) and provide further targeted programs designed to meet the needs of particular sectors (public, low-income, etc.) through both incentive and market transformation programs. In this way, the Section 12-103(f)(5) criteria are met.

f. Tariff. DCEO understands that ComEd and Ameren included a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs pursuant to Section 12-103(f)(6).

g. Independent Evaluation. In order to provide for an annual independent evaluation of the portfolio, DCEO requests the formation of an advisory group that would oversee the independent evaluation. 3% of the total funding will be set aside for hiring an evaluator and the advisory group would facilitate the transmission of data and the decision-making processes. Furthermore, as noted below, DCEO requests that the advisory group and evaluator "conduct a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations." (220 ILCS 5/12-103(f)(7))

J. Next Generation Technologies. DCEO does not plan to rely heavily on demonstration of breakthrough equipment and devices in its portion of the portfolio. As they arise during program implementation they may be considered. However, DCEO will be mindful of the 3% cap on these types of items pursuant to Section 12-103(g)

K. Penalties. DCEO takes the Section 12-103(j) penalty very seriously. DCEO fully supports the need for the best estimates available for kWh savings values, net to gross ratios and realization rates that will be produced by the independent evaluation. Any modifications to these values resulting from the evaluation process should be applied retrospectively for purposes of data analysis. However, DCEO strongly disagrees with the retroactive use of changes to these values and the resulting overall kWh savings as a basis for imposing the statutory penalties for missing the goals. DCEO has undertaken a good-faith effort to develop an efficiency plan and programs based on the best information currently available in order to achieve the energy usage reduction goals in conjunction with the appropriate utility. From a policy perspective, it can be considered neither just nor reasonable to use a retroactive modification of key planning data as the basis for the imposition of a penalty.

V. <u>Witnesses</u>

If necessary, the Department may call the following witnesses:

A. <u>Jonathan Feipel</u>, Manager of the Energy Division for the Bureau of Energy and Recycling. Mr. Feipel will provide background on the Department of Commerce and Economic Opportunity ("DCEO") and a brief history of the State's prior involvement with managing energy efficiency programs. Mr. Feipel will testify to DCEO's role in the implementation of the nascent Energy Efficiency Portfolio Standard ("EEPS") as required by Section 12-103 of the Public Utilities Act. He will describe the Department's proposed energy efficiency programs, the efficiency measures associated with each, and explain the process by which these programs were selected. He will explain DCEO's recommended approach with respect to the evaluation, measurement and verification of energy savings related to the portfolio and why DCEO needs to maintain the flexibility to adjust its programs during the three year planning period. Mr. Feipel will outline how DCEO's programs will interact with the utilities and the areas that are unique to DCEO's portion of the portfolio. His testimony will present DCEO's recommendations regarding specific aspects of the implementation of the EEPS.

In addition to the above, the Department reserves the right to call such rebuttal witnesses as may be necessary.

VI. Relief Requested

In this matter, the Illinois Department of Commerce and Economic Opportunity respectfully requests that the Commission approve its portion of the Energy Efficiency Portfolio Standard, plan and energy efficiency programs for use in the first three year implementation period. The Department further requests that the Commission:

> Approve the DCEO programs and plans as part of the larger portfolio goal shared by DCEO and the appropriate utility for each service territory. In this way, the total kWh reduction targets presented in the statute[2] represent a common goal to be achieved by the combined savings from the DCEO and relevant utility programs.
>
> Approve DCEO's plans for implementing its programs as proposed.
>
> Order the application of the Total Resources Cost Test to the entire portfolio and not to individual programs or measures.
>
> Grant DCEO the flexibility to shift funding between programs and to modify programs during this 3 year plan as needed to meet the specific demands of the market as they arise.
>
> Order the specific subset of kWh savings values for specific lighting measures to be considered as "deemed savings" values.
>
> Approve the other efficiency measure kWh savings, net-to-gross ratio and realization rate values that form the kWh savings estimates associated with each

[2] 220 ILCS 5/12-103(c)

DCEO program as the intermediate method of evaluating programmatic success until the Advisory Group and independent evaluator are able to provide revisions.

Order the use of modifications of these values to be used retroactively in all instances except the imposition of the statutory penalties.

Approve the annualization of kWh savings from individual projects.

Approve the Advisory Group as presented in DCEO's initial filing with the additional clarifications provided by the National Resources Defense Council and the Office of the Attorney General (with minor modifications).

Respectfully Submitted,

LISA MADIGAN
Attorney General of Illinois

/s/Allan V. Abinoja
GARY M. GRIFFIN
ALLAN V. ABINOJA
Assistant Attorneys General
General Law Bureau
100 W. Randolph St., 13th Fl.
Chicago, Illinois 60601
Tel: (312) 814-3650/5312
Fax: (312) 814-4425